

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

In re:)	
)	Chapter 11
NATIONAL STEEL CORPORATION,)	
et al.,)	Case No.02-08697
)	(Jointly Administered)
)	
Debtors.)	Judge John H. Squires
)	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AGAINST GRANITE CITY STEEL COMPANY**

1. The United States files this Proof of Claim at the request of the U.S.

Environmental Protection Agency ("EPA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim asserts claims against the Granite City Steel Corporation (referred to herein as "Debtor") for:

(a) the recovery of civil penalties for pre-petition violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992K, and regulations promulgated thereunder, at the Debtor's Granite City facility in Granite City, Illinois;

(c) the recovery of civil penalties for pre-petition violations of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and regulations promulgated thereunder, at the Debtor's Granite City facility in Granite City, Illinois;

(d) the recovery of civil penalties for pre-petition violations of the Clean Water Act, 33 U.S.C. §§ 1251-1387, and regulations promulgated thereunder, at the Debtor's

Granite City facility in Granite City, Illinois;

(e) the recovery of civil penalties for pre-petition violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and the regulations promulgated thereunder, at the Debtor's Granite City facility in Granite City, Illinois;

(f) the recovery of civil penalties for pre-petition violation of the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001-11050, and the regulations promulgated thereunder, at the Debtor's Granite City facility in Granite City.

CLEAN AIR ACT AIR ACT PENALTY CLAIMS

2. Debtor is liable to the United States for civil penalties for pre-petition violations of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and regulations promulgated thereunder, at its Granite City facility in Granite City, Illinois.

3. Between May 11, 1998 and September 30, 2002, Debtor caused or allowed fugitive visible emissions from the Basic Oxygen Furnace at the Granite City facility to exceed the twenty percent opacity limit on approximately twenty-nine occasions, in violation of limits imposed by Ill. Adm. Code tit. 35 § 212.446(c). This limit was imposed as part of a federally approved state implementation plan and, therefore, pursuant to 42 U.S.C. § 7413(a) and (b), the United States may enforce this opacity limit. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413(b) and 40 C.F.R. §19.4.

4. At the Granite City facility, Debtor operates three refrigerant recovery systems

that service motor vehicle air conditioning ("MVAC") equipment in the Steelmaking area.

Ownership, operation, and service of these units are subject to reporting and record-keeping requirements found at 40 C.F.R. § 82.42. On at least one occasion, during 2000, Debtor failed to properly certify ownership of this equipment to EPA as required by 40 C.F.R. § 82.42(a).

Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

5. On at least one occasion during 2000, at the Granite City facility, Debtor did not have appropriate records indicating the facility to which recovered MVAC refrigerant was sent as required by 40 C.F.R. § 82.42(b)(1). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

6. On at least one occasion during 2000, at the Granite City facility, the Debtor failed to ensure that the staff operating its MVAC refrigerant recycling units were properly certified to perform this work as required by 40 C.F.R. § 82.42(b)(2). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

7. On at least one occasion during 2000, Debtor failed to ensure that air conditioning units were emptied of refrigerants prior to disposal in its Granite City facility on-site landfill in violation of 40 C.F.R. § 82.156(f) and 40 C.F.R. § 82.166(i) and (m). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

8. On at least one occasion during 2000, Debtor failed to certify comfort air

conditioning refrigerant recycling and recovery equipment used in the Granite City facility to the EPA, in violation as required by 40 C.F.R. § 82.162. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

9. On at least one occasion during 2000, Debtor failed to maintain sufficient records of its use and discharge of freon, including CFC-12; HCFC-22; and CFC-123, at its Granite City facility in violation of 40 C.F.R. § 82.166(k). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

10. On at least one occasion during 2000, Debtor failed to ensure that its refrigeration technicians at the Granite City facility were certified, as required by 40 C.F.R. § 82.166(l). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

11. The United States hereby asserts a claim against the Debtor for civil penalties for the pre-petition violations of the Clean Air Act described in paragraphs 3-10 above, for an amount to be determined by a court or administrative agency with jurisdiction.

RESOURCE CONSERVATION AND RECOVERY ACT PENALTY CLAIMS

12. Debtor is liable to the United States for civil penalties for pre-petition violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k, and regulations promulgated thereunder, at the Granite City facility in Granite City, Illinois. RCRA provides for civil penalties of up to \$27,500 per day of violation occurring on or after January 31,

1997 pursuant to 42 U.S.C. § 3008(g) and 40 C.F.R. § 19.4.

13. Debtor is, and was at the time of the violations, the “owner” and “operator” of the Granite City facility within the meaning of RCRA and the governing regulations. At all times relevant to the allegations, “hazardous waste” was “generated” and “stored” at the Granite City, facility within the meaning of RCRA and the governing regulations. This facility is, and was at the time of the violations alleged, a hazardous waste treatment, storage, management and/or disposal “facility,” within the meaning of RCRA and the governing regulations.

14. On at least four occasions during 2000, at the Granite City facility, Debtor failed to make adequate RCRA hazardous waste determinations for at least three continuously-produced and a single one-time waste streams, including (a) roll grinding sludges; (b) bead blasting residues; (c) chromium chemical conversion of aluminum wastewater treatment sludges; and (d) in-line residues from the coke oven gas distribution pipeline. Accordingly, Debtor violated Ill. Admin. Code tit. 35 § 722.11 and 40 C.F.R. § 262.11 and is liable for civil penalties of up to \$27,500 per day for each violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

15. On at least three occasions during 2000, at the Granite City facility, Debtor improperly disposed of hazardous wastes, including: (a) bead blasting residues, which have been disposed of in the on-site nonhazardous landfill; (b) wastewater treatment sludges from chromium chemical conversion of aluminum, which, prior to September 1999 were disposed of in the on-site nonhazardous landfill, and after September 1999 have been disposed of in an unlined ditch and surface impoundments on the facility grounds; and (c) coke oven gas line residues, have been disposed of in the on-site nonhazardous waste landfill. Accordingly, Debtor violated Ill. Admin. Code tit. 35§ 703.121 and § 725.101 and 40 C.F.R. § 270.1(c) and §

265.1(a) and is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

16. From at least January 1998 through August 2000, Debtor shipped approximately 11.1 million gallons of spent pickle liquor, which is a listed hazardous waste, from its Granite City facility, off-site for reclamation without an accompanying hazardous waste manifest or land disposal restrictions notification, in violation of Ill. Admin. Code tit. 35 § 722.120(a) and §§ 728.107(a)(2) and (a)(3) and 40 C.F.R. § 262.20(a) and §§ 268.7(a)(2) and (a)(3). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day for each violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

17. Based upon the observations of EPA inspectors, the United States believes that further fact-finding will demonstrate that Debtor has been improperly managing used oil in surface impoundments at its Granite City facility. The United States believes that further fact-finding will establish that wastewater contaminated with greater than *de minimus* quantities of used oil was being managed in surface impoundments in noncompliance with Ill. Admin. Code tit. 35 § 739.11(a) and 40 C.F.R. §§ 279.12(a), 279.22. If the United States demonstrates that Debtor was or is not complying with the regulations cited above, then Debtor is liable for civil penalties of up to \$27,500 per day for each violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

18. On at least one occasion during 2000, Debtor failed to adequately train or instruct its Granite City facility employees responsible for handling hazardous wastes to ensure the facility's compliance with RCRA. Accordingly, Debtor violated Ill. Admin. Code tit. 35 § 725.116(a) and (b), as referenced by § 722.134(a)(4) and 40 C.F.R. § 265.16(a) and (b), as

referenced by § 262.34(a)(4) and is liable for civil penalties of up to \$27,500 per day for each violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

19. On at least one occasion during 2000, Debtor failed to have written job descriptions that identified requisite skill, education, or other qualifications and full duties of each facility personnel assigned to positions related to hazardous waste management at the Granite City facility, as required by Ill. Admin. Code tit. 35 § 725.116(d)(2), as referenced by § 722.134(a)(4) and 40 C.F.R. § 265.16(d)(2), as referenced by § 262.34(a)(4). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day for each violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

20. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of RCRA described in paragraphs 14-19 above, for an amount to be determined by a court or administrative agency with jurisdiction.

CLEAN WATER ACT PENALTY CLAIMS

21. Debtor is liable to the United States for civil penalties for pre-petition violations of the Clean Water Act, 33 U.S.C. §§ 1251-1387, and regulations promulgated thereunder, at the Granite City facility in Granite City, Illinois.

22. On at least one occasion during 2000, Debtor failed to include at least nine tanks at the Granite City facility with potential to discharge oil to waters of the United States in the its spill prevention, containment, and counter-measures ("SPCC") plan, in violation of 40 C.F.R. § 112.7. Accordingly, Debtor is liable for civil penalties up to \$27,500 per violation per day pursuant to 33 U.S.C. § 1319 and 40 C.F.R. § 19.4.

23. During an 2000 inspection of Debtor's Granite City facility, EPA inspectors determined that Debtor's May 31, 1996 NPDES permit application for the Granite City facility failed to include at least three wastewater sources contributing wastewater to the effluent discharge, and did not include a narrative identification of each process, operation, or production that contributes wastewater to the effluent for each outfall, in violation of 40 C.F.R. § 122.21(g)(2) and 40 C.F.R. § 122.21(g)(3). Accordingly, Debtor's NPDES permit, No. IL0000329, does not authorize Debtor to discharge hexavalent chromium or fecal coliform. Debtor has discharged hexavalent chromium and fecal coliform to navigable waters of the United States, without an applicable permit, or Debtor failed to provide accurate information in its permit application, in violation of the Clean Water Act and is, therefore, liable for civil penalties of up to \$27,500 per violation per day pursuant to 33 U.S.C. § 1319 and 40 C.F.R. § 19.4.

24. Since at least September 2000, Debtor has failed to properly collect and analyze compliance samples from the Granite City facility on at least two occasions in violation of 40 C.F.R. § 363, Table II as referenced by NPDES Permit IL0000329. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per violation per day pursuant to 33 U.S.C. § 1319 and 40 C.F.R. § 19.4.

25. From at least May 1998 through approximately August 2000, Debtor's wastewater discharges from the Granite City facility exceeded NPDES permit effluent limitations at outfall 001 on at least thirteen occasions and outfall 001A on at least one occasion, in violation of its NPDES Permit IL0000329. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per violation per day pursuant to 33 U.S.C. § 1319 and 40 C.F.R. § 19.4.

26. The United States hereby asserts a claim against Debtor for civil penalties for the

pre-petition violations of the Clean Water Act described in paragraphs 22-25 above, for an amount to be determined by a court or administrative agency with jurisdiction.

CERCLA AND EPCRA CIVIL PENALTY CLAIMS

27. Debtor is liable to the United States for civil penalties for pre-petition violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and the regulations promulgated thereunder, and the Emergency Planning and Community-Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050, at the Granite City facility in Granite City, Illinois and the Great Lakes facility in Ecorse and River Rouge, Michigan.

28. Since at least January 1998, Debtor has failed to immediately notify the National Response Center of at least seven reportable releases from the Granite City facility and also failed to provide written follow-up notice of these releases as soon as practicable, in violation of 42 U.S.C. §§ 9603, 11004(b) and 40 C.F.R. § 302.6(a). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation.

29. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of CERCLA described in paragraph 28 above, for an amount to be determined by a court or administrative agency with jurisdiction.

INJUNCTIVE OBLIGATIONS UNDER ENVIRONMENTAL STATUTES

30. National Steel has injunctive obligations to comply with environmental

requirements, including but not limited to obligations to perform under an administrative Consent Agreement and Final Order under EPCRA § 313 relating to National Steel's Granite City facility in Granite City, Illinois and the Great Lakes facility in Ecorse, Michigan, In the Matter of National Steel Corporation Granite City and Great Lakes Divisions - Granite City, IL/Ecorse, MI, U.S. EPA Docket No. EPCRA # 05-2002-0003 (November 2, 2001). Debtor has other injunctive obligations under environmental laws, including but not limited to obligations under the Clean Air Act, RCRA, Clean Water Act, EPCRA, CERCLA, and the Toxic Substances Control Act at the Granite City facility.

31. It is the United States' position that it is not required to file a proof of claim with respect to Debtor's injunctive obligations to comply with work requirements under Consent Decrees and Court Orders and Consent Agreement and Final Orders, and to comply with other environmental requirements imposed by law. Debtor and any reorganized debtor(s) must comply with the mandatory injunctive requirements of those Consent Decrees and Court Orders and Consent Agreement and Final Orders and must comply with other environmental requirements imposed by law.

32. Court-ordered and regulatory obligations are mandatory injunctive obligations with which Debtor must comply, and for which proofs of claim need not be filed under the Bankruptcy Code. Nevertheless, this claim is filed in a protective fashion only to protect the United States' rights with respect to such obligations of the Debtor. The United States reserves the right to take future actions to enforce any such obligations of the Debtor. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies.

ADDITIONAL TERMS

33. This claim reflects the known liability of the Debtor to the United States on behalf of EPA. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This proof of claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

34. The United States has not perfected any security interest on its claim against the debtor.

35. This claim is filed as a general unsecured claim except to the extent of any secured/trust interest in insurance proceeds received by the Debtor on account of environmental claims of the United States, and to the extent the United States is entitled to administrative expense priority for post-petition penalties. The United States will file any application for administrative expense priority at the appropriate time. See also paragraphs 30-32 *supra*.

36. Except as expressly stated in this Proof of Claim, no judgments against the Debtor have been rendered on this Proof of Claim.

37. Except as expressly stated in this Proof of Claim, the Debtor has not made any payments to the United States on these claims.

38. This Proof of Claim is also filed to the extent necessary to protect the United States' rights relating to any insurance proceeds received by the Debtor relating to any of the sites discussed herein.

Respectfully submitted,

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

SARAH HIMMELHOCH
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-0180

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

JOEL NATHAN
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604
(312) 353-5300